

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3

4 Jareal Edwards,
5 Petitioner
6 v.
7 Jo Gentry, et al.,
8 Respondents
9

2:15-cv-00673-JAD-NJK

Order Directing Petitioner to File a
Response by December 17, 2016

10 Nevada state-prison inmate Jareal Edwards brings this § 2254 petition to challenge his state-
11 court conviction for robbery and related charges. Because only one of Edwards's claims is
12 exhausted, I give him until December 17, 2016, to notify the court whether he wishes to forever
13 abandon his unexhausted claims and proceed on only his exhausted claims, dismiss the petition in its
14 entirety without prejudice, or move to stay this case pending the exhaustion of his claims in state
15 court.

16 Discussion

17 A. Edwards's petition is partially unexhausted.

18 Edwards brings this § 2254 action to challenge his state-court conviction for conspiracy to
19 commit robbery, robbery with use of a deadly weapon, and first-degree kidnaping, to which Edwards
20 pleaded guilty in Nevada's Eighth Judicial District Court in 2013. I screened Edwards's initial
21 petition and, because it appeared that Edwards failed to first exhaust his claims in state court, I
22 directed him to file an amended petition along with proof of exhaustion.¹

23 Edwards has filed an amended petition and a memorandum of points and authorities in which
24 he admits that only ground one of his petition is exhausted.² Ground one is a claim for ineffective
25 assistance of counsel based on his counsel's failure to file a direct appeal. It appears that this claim

26
27 ¹ ECF No. 4.

28 ² ECF No. 6-1.

1 is, as Edwards contends, exhausted. But Edwards has made no showing that grounds 2–4 are
2 exhausted.

3 **B. Edwards must notify the court how he wishes to proceed on his claims.**

4 Because Edwards’s petition contains both exhausted and unexhausted claims, he has three
5 options:

- 6 1. He may submit a sworn declaration voluntarily abandoning the unexhausted claims in
7 his federal habeas petition, and proceed only on the exhausted claims;
- 8 2. He may submit a sworn declaration stating that he wishes return to state court to
9 exhaust his unexhausted claims, in which case his federal habeas petition will be
10 denied without prejudice; or
- 11 3. He may file a motion asking this court to stay and abey his exhausted federal habeas
12 claims while he returns to state court to exhaust his unexhausted claims.

13 Edwards is cautioned that stay and abeyance (option 3) is available only in limited
14 circumstances.³ “Because granting a stay and abeyance effectively excuses a petitioner’s failure to
15 present his claims first to the state courts, stay and abeyance is only appropriate when the district
16 court determines that there was good cause for the petitioner’s failure to exhaust his claims first in
17 state court.”⁴ Even if a petitioner had good cause, “the district court would abuse its discretion if it
18 were to grant him a stay when his unexhausted claims are plainly meritless.”⁵ But, “if the petitioner
19 had good cause for his failure to exhaust, his unexhausted claims are potentially meritorious, and
20 there is no indication that the petitioner engaged in intentionally dilatory litigation tactics,” then “the
21 district court should stay, rather than dismiss, the mixed petition.”⁶ Edwards is also cautioned that, if
22 he chooses to file a motion to stay, respondents will be given a chance to file a response. **Edwards
23 must notify the court how he wishes to proceed by December 17, 2016. If Edwards does not
24 choose one of these options or request other appropriate relief from this court by December 17,**

25 ³ *Rhines v. Weber*, 544 U.S. 269 (2005).

26 ⁴ *Id.* at 277.

27 ⁵ *Id.*

28 ⁶ *Id.* at 278.

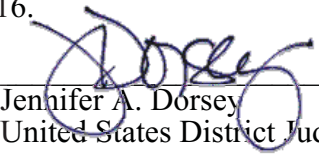
1 **2016, his petition will be denied without prejudice.⁷**

2 **Conclusion**

3 Accordingly, IT IS HEREBY ORDERED that Edwards must notify the court how he wishes
4 to proceed with this action by **December 17, 2016. If Edwards fails to make an election by this**
5 **deadline, this action will be dismissed in its entirety without prejudice.** Respondents may file a
6 response to any motion filed by Edwards in response to this order as provided by the local rules. No
7 further response is required at this time.

8 The Clerk of Court is directed to substitute Jo Gentry for Brian Williams as a respondent as
9 provided under Rule 25(d) of the Federal Rules of Civil Procedure.

10 Dated this 17th day of November, 2016.

11 
12 Jennifer A. Dorsey
United States District Judge

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27 ⁷ Edwards recites the standard for stay and abeyance in the memorandum of points and authorities
28 attached to his amended petition, but he does not demonstrate good cause or show that his
unexhausted claims are not plainly meritless.